

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANUEL ANTONIO SOTO,

Petitioner,

v.

Case Number 10-20635

Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

**ORDER DENYING MOTION FOR LEAVE TO FILE SUPPLEMENT AND
TRANSFERRING SECOND OR SUCCESSIVE MOTION TO VACATE SENTENCE TO
THE UNITED STATES COURT OF APPEALS**

Presently before the Court are the petitioner's motion for leave to supplement his original motion to vacate sentence and second motion to vacate sentence under 28 U.S.C. § 2255. On March 21, 2019, the Court entered an opinion and order denying the petitioner's motion to vacate sentence and motion to reduce sentence. *See* ECF No. 656. The Court also entered an order denying a certificate of appealability as reasonable jurists could not debate its conclusion as to the petitioner's claims. *See* ECF No. 657. On May 30, 2019, the Court denied the petitioner's motion for reconsideration. *See* ECF No. 665. Because the petitioner's original motion to vacate sentence has been adjudicated, the request to file a supplement will be denied as untimely. A motion to supplement an already-adjudicated motion amounts to a successive motion. *Moreland v. Robinson*, 813 F.3d 315, 324 (6th Cir. 2016). The Court lacks jurisdiction over the second motion to vacate sentence in the absence of precertification for the filing of such a petition. *Id.* at n.2 (citing *Burton v. Stewart*, 549 U.S. 147, 149 (2007)). Therefore, the Court must transfer the case to the court of appeals to determine whether the petitioner may file a successive motion.

An individual seeking to file a second or successive motion under section 2255 first must ask the appropriate court of appeals for an order authorizing the district court to consider the

petition. *See* 28 U.S.C. §§ 2255(h), 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). Congress has vested in the court of appeals a screening function that the district court would have performed otherwise. *Felker v. Turpin*, 518 U.S. 651, 664 (1996). When a defendant files a second or successive motion to vacate his sentence in the district court without preauthorization from the court of appeals, the district court must transfer the motion papers to the court of appeals. *See* 28 U.S.C. § 1631 (directing that “[w]henever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed”); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (holding that “when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.”).

The petitioner cannot proceed with his motion without first obtaining permission to file a second or successive motion to vacate from the court of appeals. Therefore, the Clerk of Court is ordered to transfer the motion papers to the court of appeals pursuant to *In re Sims* and 28 U.S.C. § 1631.

Accordingly, it is **ORDERED** that the petitioner’s motion for leave to file supplement to 28 U.S.C. § 2255 (ECF No. 668) is **DENIED**.

It is further **ORDERED** that the Clerk of Court **TRANSFER** the petitioner's motion to vacate sentence (ECF No. 670) to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: August 6, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 6, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI